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EXAMINER

NGUYEN, TU X

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/855,499  
Filing Date: May 16, 2001  
Appellant(s): BLANC, PATRICK

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Nataliya Dvorson  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/7/08 appealing from the Office action mailed 6/6/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 4-11, are rejected under 35 U.S.C. 103(a) as being unpatentable over the Applicant Admitted prior art.

Regarding claim 1, the Applicant admitted prior art discloses a method of adjusting transmission power for base stations transmitting in macro-diversity in a mobile radiocommunications system, wherein

a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period (page 2, lines 19-30), and

wherein each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period (see page 2 lines 31-36).

Regarding claim 6, the Applicant admitted prior art discloses a radio network controller, including, for adjusting transmission powers in base stations transmitting in macro-diversity in a mobile radiocommunications system: means for signaling a reference transmission power value for said adjustment to each of said base stations, together with an adjustment period (see page 2, lines 19-36).

Regarding claim 9, the Applicant admitted prior art discloses a base station, including, for adjusting its transmission power when transmitting in macro-diversity in a mobile radiocommunications system: means for receiving a reference transmission power value for said adjustment, as transmitted by a radio network controller together with an adjustment period; and means for periodically adjusting its transmission power to said reference transmission power value, at said adjustment period (see page 2, lines 19-36).

Regarding claims 2, 4, 7 and 11, the Applicant admitted prior art discloses periodically-performed adjustments are performed at predetermined instants (see par.2 lines 27-28, “instant  $t_n$  corresponds to “predetermined instants”).

Regarding claims 5 and 8, the Applicant admitted prior art discloses an updated reference transmission power value can be signaled (see page 2, lines 25-26, “the RNC controls base stations” is inherent signals to base stations for transmission power adjustment, “determined power to be used for transmission” corresponds to “reference transmission power value”).

Regarding claim 10, Corbett et al. disclose a mobile radiocommunications system, comprising means for performing a method according to claim (see page 2, lines 19-36, the base stations is inherently included power adjustment process circuit for variable transmission power transmitted by base station transceiver).

### ***Allowable Subject Matter***

Claims 3 and 12-14, objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding dependent claims 3 and 12, the prior arts fail to disclose “the transmitted information is structured in the form of frames that are numbered using continuous increasing numbering, said adjustment period is expressed as a number N of frames, and said predetermined instants corresponds to frames numbered n (modulo N), where  $0 \leq n < N$ ”, as cited in the claims.

#### **(10) Response to Argument**

In summarizing independent claims 1, 6 and 9, the Examiner interprets claim subject matter as following: each base station receives an instruction which contains two information, a reference transmission power and an adjustment period. The instruction is periodically sent to the base station; and therefore, the base station periodically adjusts its transmission power to said reference transmission power, at said adjustment period.

In response to Appellant argues page 11, “in other words, the reference transmission power is not changed (i.e, not signaled) at each adjustment period. That is, in the exemplary embodiment, there is no need to signal updated values frequently even if the reference transmission power has changed. It is only necessary to perform regular adjustments even if they are performed on the most recently signaled value for the reference transmission power, which does not necessarily corresponds to an up-to-date value of the transmission power”. The Examiner respectfully disagrees, Appellant interprets the reference transmission power is not changed (i.e, not signaled) at each adjustment period, which is beyond the scope of the claim,

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the claim specifically states that “the base station periodically adjusts its transmission power to said reference transmission power”.

In response to Appellant argues pages 13-14, specifically on page 14, Appellant concludes that “as is visible from the above-quoted passage from the APA, there is no disclosure or suggestion of signaling an adjustment period and periodically correcting the transmission power at the signaled adjustment period”, the Examiner respectfully disagrees, the Examiner’s rejection refers to APA (Applicant admitted prior art) which is Patent WO 99/31819 discloses “The radio network controller determines initial and new transmit powers and the synchronizing time are provided to the respective base stations” (page 6, lines 26-27) and “the serving base station power adjustment is performed gradually with the target base station transmitting at the initial power setting and the serving base stations adjusting their transmission powers toward the new values at the synchronizing time,” corresponds to the Examiners summarizing claim subject matter as above, the base stations adjust its transmission power at an adjustment period according to the radio network controller instruction. In addition, not only the radio network controller determines an initial new transmit power, the radio network controller periodically (page 17 lines 15-17) signaling to the base stations during the diversity handover process; and therefore, the base stations periodically adjusting its transmission power according to instructions sent from the radio network controller. In the other embodiment, the base station adjusts its transmission power at selected ones of those opportunities or periodically (page 16 lines 20-22).

In response to Appellant argues page 15 lines 6-7, the synchronization time is not an adjustment period, the Examiner respectfully disagrees, Patent WO 99/31819 discloses the synchronize time is the information sent from the radio network controller (page 6, line 27) and

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the base stations adjusting their transmit powers toward the new values at the synchronizing time (page 7 lines 5-6).

In response to Appellant argues page 15 lines 8-9, “the synchronization time (or instant) cannot be both a predetermined instant and the adjustment period”, the Examiner disagrees, “synchronizing time” corresponds to “adjustment period” as the Examiner argument above paragraph. A time information (synchronizing time) sent from radio network controller demanding the base station to adjust transmission power at that time, is also read on “a predetermined instant”.

In response to Appellant argues page 16 lines 5-7, there is no disclosure of signaling an adjustment period and periodically adjusting the transmission power to the reference transmission power at the adjustment period, the Examiner respectfully disagrees, Patent WO 99/31819 discloses page 6 line 18 through page 7 line 10, the radio network controller determined initial and periodically (correct for drift in coordinated base station transmit power levels) power setting and synchronizing time are provided (reads on signaling) to the respective base stations; accordingly, the base stations adjust its, initial and periodically transmission powers at the provided synchronizing time.

For the dependent claims 2, 4, 5 and 10, the rejection is set forth by virtue of their dependency to unpatentable independent claims.

### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.



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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Tu X Nguyen/

Examiner, Art Unit 2618

8/27/08

Conferees:

/Matthew D. Anderson/

Supervisory Patent Examiner, Art Unit 2618

/Edward Urban/

Supervisory Patent Examiner, Art Unit 2618